



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 11, 1996

Mr. Robb D. Catalano
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
Dallas, Texas 77204-2162

OR96-1861

Dear Mr. Catalano:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101798.

The City of Dallas (the "city") received an open records request for copies of the 911 tapes of a call made to the Dallas Police Department. You assert that these tapes are excepted from disclosure under section 552.103(a) of the Government Code.

Although the request was received by the city on August 6, 1996, the city did not seek a decision from this office until August 21, 1996. *See* Gov't Code § 552.308 (post office cancellation shows whether request is timely made). Section 552.301 of the Government Code provides that:

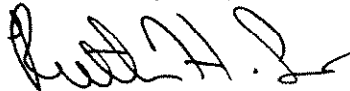
(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under [chapter 552] must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision and state the exceptions that apply *within a reasonable time but not later than the 10th calendar day after the date of receiving the written request*. [Emphasis added.]

Chapter 552 thus imposes a duty on a governmental body seeking an open records decision to submit that request to this office within ten days after receipt of the request for information. Failure to abide by this provision results in the presumption that the information is public. Gov't Code § 552.302.

The presumption that information is public when the ten day deadline is not met can only be overcome by a compelling demonstration that the information at issue should not be made public, such as when information is made confidential by other law. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by showing information was made confidential by other law or affects third party interests). As section 552.103(a) is a discretionary exception that can be waived by failure to timely seek a decision from this office, the 911 tape for which you assert section 552.103(a) is considered public and must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

SAB/RHS/ch

Ref.: ID# 101798

Enclosures: Submitted tape

cc.: Mr. Charles L. Caperton
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(w/o enclosures)